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Supreme Court of the United States

OCTOBER TERM, 1950

No. 182

LOUIS MILLER AND MRS. LOUIS MILLER,
PETITIONERS,

versus

UNITED STATES OF AMERICA, RESPONDENT.

Petition For A Writ of Certiorari to The United States Court of Appeals For the Fifth Circuit.

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and
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No._____

LOUIS MILLER AND MRS. LOUIS MILLER,
PETITIONERS,

versus

UNITED STATES OF AMERICA, RESPONDENT.

Petition For A Writ of Certiorari to The United States Court of Appeals For the Fifth Circuit.

TO THE HONORABLE SUPREME COURT
OF THE UNITED STATES:

Now come Louis Miller and wife, Mrs. Louis Miller, Petitioners in the above entitled and numbered cause, and file this, their Petition for a Writ of Certiorari, to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this cause.

STATEMENT OF THE CASE

This action was instituted in the United States District Court for the Western District of Texas by Re-

spondent, the United States of America, on July 20, 1949, against Petitioners, Louis Miller and Mrs. Louis Miller, under the provisions of the Emergency Price Control Act of 1942,/1 as amended, and of the Housing and Rent Act of 1947,/2 as amended,/3 to recover for alleged overcharges of rent on various properties described in the complaint. Respondent, in addition to seeking treble damages, sought an order for restitution, a temporary restraining order, a preliminary injunction and a permanent injunction restraining Petitioners from demanding or accepting any rent in excess of the maximum legal rent. (Record, pages 2-10). The cause was tried by the Court without a jury, beginning on October 17, 1949 and ending on October 21, 1949, and judgment was entered on February 27, 1950. (Record, pages 14-21).

Rent control in Texas terminated midnight October 18, 1949, by virtue of House Bill 808, Chapter 472, Acts of the Legislature of the State of Texas, 51st Regular Session,/4 and the act of the Housing Expediter making public announcement of such termination fifteen days prior to such date, pursuant to the provisions of Sub-Section (j)(2) of Section 203 of the Housing and Rent Act of 1949./5 (Record, page 17).

No restraining order or preliminary injunction was granted and Respondent in open Court withdrew its

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1/ Act January 30, 1942, c. 26, Title II, § 205 (a) and (e), 56 Stat. 33, 50 U.S.C.A. App. 925 (a) and (e).

2/ Act June 30, 1947, c. 163, Title II, §§ 204, 205 and 206, 61 Stat. 199, 50 U.S.C.A. App. 1894, 1895 and 1896.

3/ Act March 30, 1949, c. 42, Title II, § 204, 63 Stat. 27, 50 U.S.C.A. App. 1895.

4/ Vernon's Annotated Texas Civil Statutes, Art. 1269 l-1. The text of the article is quoted in the appendix on page 16.

5/ Act March 30, 1949, c. 2, Title II, § 203 (j)(2), 50 U.S.C.A. App. 1894 (j)(2).

prayer for an injunction. Petitioners challenged the right of the Court to award damages to Respondent for any violations committed prior to April 1, 1949, the effective date of the Housing and Rent Act of 1949, and also challenged the right of the Court to issue an order of restitution since no injunctive relief was sought and since there could be no justification in compelling compliance with a law terminated by the Legislature of the State of Texas. (Record, page 13).

The Trial Court awarded judgment against Petitioners for double damages in the amount of Six Thousand Five Hundred Seventy-Seven Dollars and Ninety-Two Cents ($6,577.92) of which amount Four Thousand Seven Hundred Seventy-Four Dollars and Thirty Cents ($4,774.30) covered violations which occurred prior to April 1, 1949 and also ordered restitution in the sum of Five Thousand Two Hundred Sixty-Five Dollars and Four Cents ($5,265.04). (Record, pages 18-20). The opinion of the District Court is not reported. Petitioners appealed from this judgment. (Record, pages 24-27).

The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the Trial Court. (Record, pages 29-33). The opinion of the Court is reported in 186 F. 2d 937.

Petitioners in due time filed their Petition for Rehearing (Record, page 34) which Petition was denied by the Court of Appeals on April 12, 1951 (Record, page 38) and this cause is now properly before this Court for review.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Did the Court of Appeals err in giving retroactive effect to the Housing and Rent Act of 1949 and allowing the United States to recover double damages for violation of rent ceilings prior to April 1, 1949 when the law in effect prior to April 1, 1949 did not give the United States any action for damages against Petitioners for violation of rent ceilings?

2. Did the Court of Appeals err in affirming the judgment of the Trial Court which ordered the Petitioners, after the termination of rent control in Texas, to make restitution of excess rents collected when such order was not ancillary to injunctive relief and could not assist in the enforcement of a law which was no longer in effect?

STATUTES INVOLVED

The interpretation of the following statutes is involved:

Section 205 of the Housing and Rent Act of 1947, Act June 30, 1947, c. 163, Title II, 61 Stat. 199, 50 U. S. C. A. App. 1894, as amended by Section 204 of the Housing and Rent Act of 1949, Act March 30, 1949, c. 42, Title II, 63 Stat. 27, 50 U. S. C. A. App. 1895. The sections as originally enacted and as amended are quoted in the Appendix.

Section 206 (b) of the Housing and Rent Act of 1947.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I.

The holding of the Court of Appeals in this case, giving retroactive effect to the Housing and Rent Act of 1949 in the absence of clear and imperative language showing such legislative intent is in conflict with the decisions of the Supreme Court in *Claridge Apartments*

Company v. Commissioner of Internal Revenue, 323 U.S. 141, 65 S. Ct. 172, 89 L. Ed. 139; *Miller v. The United States*, 294 U.S. 435, 55 S. Ct. 440, 79 L. Ed. 977; *Brewster v. Gage*, 280 U.S. 327, 50 S. Ct. 115, 74 L. Ed. 457; and *United States v. Magnolia Petroleum Company*, 276 U.S. 160, 48 S. Ct. 236, 72 L. Ed. 509.

It must be borne in mind that prior to April 1, 1949 the United States did not have any action for damages against Petitioners for violation of rent ceilings. On that day the Housing and Rent Act of 1949 became effective giving to the United States an action for damages against a landlord who violated rent ceilings where the tenant had not instituted suit within thirty days *from the date of the occurrence of the violation.* Nevertheless, the Trial Court allowed the United States double damages for violations which occurred at a time when no right of action was given to the United States and the Court of Appeals upheld the retroactive effectiveness of the law.

There are literally hundreds of cases wherein our Courts have refused to give retroactive effect to legislative acts. It is true that there are many cases in which retroactivity has been upheld; but the correct rule enunciated by this Honorable Court for determining whether or not an act of Congress is to operate retroactively is clear. Before retroactive effect is given to a law there must be clear, strong and imperative language in the law itself that it was intended to have retroactive effect and that no other meaning could be given to the legislative language.

This Honorable Court held in *United States v. Magnolia Petroleum Company*:

> "Statutes are not to be given retroactive effect or construed to change the status of claims fixed in accordance with earlier provisions unless the legislative purpose to do so plainly appears."

Again in *Brewster v. Gage,* this Court said:

> "Ordinarily, statutes establish rules for the future, and they are not to be applied retrospectively unless that purpose plainly appears."

In *Miller v. The United States,* this Court held:

> "The law is well settled that generally a statute cannot be construed to operate restrospectively unless the Legislature's intention to that effect unequivocally appears * * *."

Again in *Claridge Apartments Company v. Commissioner of Internal Revenue,* this Court used this language:

> "Retroactivity, even where permissible, is not favored except upon the clearest mandate. It is the normal and usual function of legislation to discriminate between closed transactions and future ones or others pending but not completed."

Although the Government has heretofore argued that these cases apply only to substantive rights and not to remedial and procedural matters, we submit that the 1949 enactment affects substantive rights; but whether it does or not, this Honorable Court had held that the general law with respect to retroactive effect of statutes applies also to remedial or procedural statutes. *U. S. Fidelity & Guaranty Company v. United States,* 209 U.S. 306, 28 S. Ct. 537, 52 L. Ed. 804; *Fullerton-Krueger Lumber Company v. Northern Pacific Railway Company,* 266 U.S. 435, 44 S. Ct. 143, 69 L. Ed. 367; and *United States v. St. Louis, San Francisco & Texas Railway Company,* 270 U.S. 1, 46 S. Ct. 182, 70 L. Ed. 435.

Prior to the enactment of the Housing and Rent Act of 1949 which became effective on April 1, 1949, neither the Price Administrator, the Housing Expediter nor the

United States had any claim whatsoever for damages against a landlord who may have violated rent ceilings. The tenant was given the right to recover damages from the landlord up to three times the amount of the overcharge but no right of action for damages was given the United States. Congress created a new right in favor of the United States in passing the Housing and Rent Act of 1949 whereby the United States could recover a penalty of three times the amount of any overcharge. The Act uses the term "liquidated damages", but it has uniformly been held that when an action is brought by the Government, the exaction sought is in the nature of a penalty. It is conceded that Congress can give retroactive effect to a law where no vested rights are destroyed and there is no violation of the "due process" provision of the Fifth Amendment to the Constitution of the United States, but the language of the legislative enactment must be clear, strong and imperative.

An inspection of the language of the Housing and Rent Act of 1949 shows conclusively that Congress did not intend that the Act be effective retroactively. The language of the 1949 amendment is in the present tense—*"is demanded * * * fails to institute an action * * * is not entitled"*; and the right given to the Government is in future tense—*"shall be liable to the United States."* If Congress intended that the Act have retrospective effect, it could have used language clearly signifying such intention, but it did not do so.

Section 305 of the Act clearly states:

> "This Act shall become effective on the first day of the first calendar month following the month in which it is enacted."

The law was enacted on March 30, 1949, and it became effective two days later on April 1, 1949. If Congress

wanted the Act to take effect at an earlier date it could have so provided, but it did not.

In determining whether or not Congress intended for this law to be retroactive, the effect on both the tenant and the landlord must be considered. The Government has heretofore argued that since only one action could be brought before the law became effective and since only one action can be brought after the law became effective, it made no difference whether the action could be brought by the tenant or by the Government. Such reasoning, however, is not correct. In a suit brought by a tenant the landlord has a right to offset any indebtedness owed him by the tenant or any damages resulting from the tenant's occupancy of the rented premises. But the Court of Appeals has held that where the Government institutes a suit for the recovery of a penalty, the landlord does not have such right./6 We submit that the right to offset is a vested right which Congress did not intend to destroy retroactively and that even if Congress did so intend the retroactive destruction of such vested right would do violence to the "due process" provision contained in the Fifth Amendment of the Constitution.

It should be noted that the amendment provides that the United States may institute an action where the tenants fails to institute an action within thirty days from the date of the *occurrence of the violation.* If this provision is intended to be effective retroactively it would mean that even though a tenant had a vested right under the Housting and Rent Act of 1947 to institute an action for treble damages and that right continued for a period of one year,/7 such right if it accrued prior to March 1, 1949 would ipso facto be lost if the Government elected

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6/ Woods v. Selber, 5 Cir., 171 F. 2d 900.

7/ Act June 30, 1947, c. 163, Title II, § 205, 61 Stat. 199, 50 U.S.C.A. App. 1895.

to institute an action immediately after the effective date of the 1949 amendment. The Government has heretofore simply argued that since Petitioners are landlords they should not be concerned with the taking away of rights of tenants. But Congress was concerned with both the rights of landlords and tenants and the interpretation of a law can be determined only by ascertaining the effect it might have upon all who are concerned. If this amendment is given prospective effect, as Congress no doubt intended, the tenant would have exclusive right for thirty days after the Housing and Rent Act of 1949 became law in which to institute suit for damages for rent overcharges which occurred within the one-year period. If retroactivity was intended, the language of the Act would be meaningless insofar as the tenant's rights were concerned involving violations which occurred more than thirty days prior to April 1, 1949. Surely Congress did not intend to enact a meaningless provision and deprive a tenant of rights that were his.

There is nothing in the legislative history of the Act to show a contrary intention on the part of Congress. The opponents of rent control were opposed to the provision authorizing the Government to recover treble damages for violations which were governed by a one-year Statute of Limitations. It is true that Congress wanted to pass a law that would result in stricter compliance and that compliance could best be effected by authorizing the Government to recover a penalty if the tenant did not choose to seek damages, but there is nothing to indicate that Congress intended the new law and the new right given to the Government to apply to violations which took place before the Congressional enactment.

We are aware that the only reported appellate decision passing upon the effective date of the Housing and Rent Act of 1949 prior to the decision of the Court of

Appeals in this cause was *United States v. Gianoulis*, 3 Cir., 183 F. 2d 378, wherein the Court held that Congress intended to give this Act retroactive effect. The Court in that case recognized that the decisions of the District Courts which had passed upon this question were in sharp conflict. Only the Government appeared in the *Gianoulis* case so the Court did not have the benefit of hearing the reasoning or authorities which indicate quite clearly that this Act should not be given retroactive effect. We are also aware that since the decision in this case by the Court of Appeals for the Fifth Circuit, the Court of Appeals for the Ninth Circuit in *Mattox v. United States*, 187 F. 2d 406, also gave retroactive effect to the Act. The Court observed that both the Court of Appeals for the Third Circuit and the Fifth Circuit had upheld the Government's contention of retroactivity and stated — "* * * *we are content to go along with them.*" Since the holding and reasoning in the *Gianoulis* case is not sound and is not in accord with the principles of statutory construction heretofore enunciated by this Court, it is not proper for other Courts to "go along" with such holding.

Petitioners submit that in this cause a Federal question—the interpretation of a Federal Statute—has been decided in a way which is in conflict with applicable decisions of the Supreme Court as hereinabove pointed out and that the precise question of the construction of this particular Federal Statute has not been but should be settled by this Honorable Court.

Petitioners have not complained of the action of the Trial Court awarding the United States a penalty in the form of damages in double the amount of rent overcharges received after April 1, 1949, even though the violations were based upon a purely technical matter of law. They do, however, vigorously complain of the action of

the Trial Court, affirmed by the Court of Appeals, in awarding damages to the United States for violations which occurred at a time when the United States was not entitled by law to recover damages or exact a penalty from them.

II.

The decision of the Court of Appeals in upholding the judgment of restitution in this case is in conflict with the reasoning of the United States Court of Appeals for the Ninth Circuit in *Woods v. Richmond*, 174 F. 2d 614, which case has been followed by other Courts.

Petitioners are aware that this Honorable Court in *United States of America v. Moore*, 71 S. Ct. 524, decided on March 26, 1951, by a 5 to 4 decision, upheld the order of restitution under Section 206 (b) of the Housing and Rent Act of 1949 after the same had been terminated by the City of Dallas. The present case differs from the *Moore* case in that rent control was completely abolished by the Legislature of Texas/[8] pursuant to provisions of Sub-Section (j) (2) of Section 203 of the Housing and Rent Act of 1949. The legislative enactment, which is quoted in the appendix, abolished rent control throughout the State of Texas and declared that Federal rent controls were no longer needed in the State of Texas.

We earnestly feel that the matter was not properly presented to this Honorable Court by Respondents in *United States of America v. Moore*. It is not, in our opinion, a question of whether or not the termination of

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8/ House Bill 808, c. 472, Acts of the Legislature of Texas, 51st Regular Session. The act was passed on June 9, 1949, approved by the Governor on June 23, 1949, and became effective on October 18, 1949, 90 days after adjournment of the Texas Legislature and 15 days after public announcement of such termination by the Housing Expediter.

rent control ended the legal effect of Sections 205 and 206 of the Act, but rather whether or not a Court of equity should grant equitable relief to assist in the enforcement of a law which was no longer in effect and which was no longer needed as a matter of public policy as determined by the Legislature of the State of Texas. We do not disagree with the holding of this Honorable Court in *Porter v. Warner Holding Company*, 328 U.S. 395, 66 S. Ct. 1086, 90 L. Ed. 1332, wherein the doctrine of restitution in cases of violation of rent ceilings found its origin, but it is respectfully submitted that in accordance with that opinion restitution must be based upon either of two theories: first, as an adjunct to injunctive relief or, second, as an order apporpriate or necessary to enforce compliance with the Act.

In the case at bar, there can be no adjunct to injunctive relief as no such relief was granted or actually sought, and since the effectiveness of the Act was terminated by the Legislature of the State of Texas and rent control was no longer the public policy of the State, we submit that it was not proper for the Trial Court to order restitution after such termination and change of policy and it was error for the Honorable United States Court of Appeals to affirm the issuance of such order of restitution. *Woods v. Richmond*, which seems to be the leading case upholding the authority of the Court to grant an order of restitution with or without a prohibiting injunction, contains this all-important statement:

> "Had the Congressional policy in respect to rent control lapsed with the expiration on June 30, 1947, of the Emergency Price Control Act, we would assume than an order designed primarily to vindicate the defunct policy would no longer be appropriate in equity."

Unlike the situation in the case at bar, in *Woods v. Richmond* and also in *Eberling v. Woods*, 8 Cir., 175 F. 2d 242, where restitution was upheld under the Emergency Price Control Act of 1942, as amended, after its expiration, rent control was in effect and was still the public policy as a means of avoiding inflation. But in the instant case the public policy of the State of Texas eliminated the need for rent control at the time that the Trial Court decided this cause and also at the time that the matter was presented to the Court of Appeals and that public policy is the same today—in the State of Texas.

The cases which hold that restitution may be ordered even though an injunction is not issued have no bearing upon our case. That was settled in *Porter v. Warner Holding Company* under the second theory of compelling compliance with the Act; but we submit that where the Act is no longer in effect and rent control is no longer a part of the public policy of the State of Texas, neither the Trial Court nor the Court of Appeals was justified in using equitable powers to vindicate the defunct policy of rent control.

If the doctrine of the *Moore* case is carried to its logical extreme since laches does not apply to a public officer, the Government will be able to obtain an order of restitution twenty-five years from today for a violation which occurred while the Housing and Rent Act of 1947 was in effect. It is respectfully submitted that no such result was intended and that the *Moore* case holding should receive reconsideration.

It should be remembered that the primary purpose of seeking an order of restitution rather than maintaining an action at law is to evade the one-year Statute of Limitations imposed by the Emergency Price Control Act of

1942/[9] and the Housing and Rent Act of 1947./[10] The Government should not be permitted to circumvent these Congressional enactments which were designed to protect persons against whom delayed claims might be urged. There is no reason for a Court granting equitable relief when an adequate legal remedy is available.

CONCLUSION

Petitioners strongly feel that the judgment rendered against them by the Trial Court and affirmed by the Court of Appeals is erroneous. They have not complained about that part of the judgment which requires them to pay One Thousand Eight Hundred Three Dollars and Sixty-Two Cents ($1,803.62) to the United States for damages for violation of rent ceilings which occurred after April 1, 1949, but they do not feel that they should be obligated to pay the United States the sum of Four Thousand Seven Hundred Seventy-Four Dollars and Thirty Cents ($4,774.30) for violations which took place at a time when the United States had no right to recover damages or a penalty. They feel that an order of restitution was not appropriate since its issuance was not an adjunct to injunctive relief and there was no justifiable reason to compel compliance with a law and a public policy which were no longer in effect.

PRAYER

WHEREFORE, Petitioners respectfully pray that this Honorable Court grant their Petition for a Writ of Certiorari and that upon further hearing the judgment of

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9/ § 205 (e).

10/ § 205.

the Trial Court and the Court of Appeals be reversed and this cause be remanded with instructions for further trial.

Respectfully submitted,

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This is to certify that three copies of this Petition for a Writ of Certiorari have been mailed to Honorable Phillip B. Perlman, Solicitor General, Washington, D. C.

.....

AL M. HECK.

APPENDIX

House Bill 808, Chapter 47, Acts of the Texas Legislature of 1949, 51st Regular Session, reads as follows:

> "Section 1. Rent Control as established by the Act of the Eighty-first Congress of the United States, extending Rent Control for a period of fifteen (15) months from and after March 31, 1949, as further described in Housing and Rent Act of 1949, H. R. 1731, is hereby abolished in the State of Texas, and is declared to be no longer needed in the State of Texas, and all Federal rent controls are hereby declared no longer needed in the State of Texas."

§ 205 of the Housing and Rent Act of 1947 reads as follows:

> "RECOVERY OF DAMAGES BY TENANTS
>
> Sec. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted or received, whichever in either case may be the greater amount: Provided, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose

of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violation alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered."

After being amended by the Housing and Rent Act of 1949, § 205 reads as follows, the amendments being in italics:

"RECOVERY OF DAMAGES

Sec. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, *or shall be liable to the United States as hereinafter provided,* for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: Provided, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.

Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation: *Provided, that if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the United States may institute such action within such one year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations.* For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of the action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same *person* prior to the institution of the action in which such judgment was rendered."

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 182

LOUIS MILLER and MRS. LOUIS MILLER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court wrote no opinion. The opinion of the Court of Appeals (R. 29-33) is reported at 186 F. 2d 937.

JURISDICTION

The judgment of the Court of Appeals was entered on January 10, 1951 (R. 33) and petition for rehearing denied on April 12, 1951 (R. 38). The petition for certiorari was filed on July 9, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Did the 1949 amendment to Section 205 of the Housing and Rent Act of 1949, authorizing the United States to sue for statutory damages where the tenant failed to sue within thirty days of violation, give the United States the same authority as tenants had to sue for violations occurring prior to April 1, 1949, the date of the amendment?

2. Was the district court empowered to order a landlord to make restitution of overceiling rentals received by him in a defense-rental area which was decontrolled after the occurrence of the violations?

STATUTES INVOLVED

The pertinent provisions of the Housing and Rent Act of 1947, as amended, 61 Stat. 193; 62 Stat. 93; 63 Stat. 18, 50 U.S.C. App. Supp. IV 1881 et seq., and the Emergency Price Control Act of 1942, 56 Stat. 23; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U.S. App. 901 et seq. are set forth in the Appendix, *infra* pp. 15 to 19.

The Housing and Rent Act of 1947, as amended in 1948, will hereafter be referred to as the 1947 Act or Act of 1947; and this Act as amended in 1949 will be referred to as the 1949 Act or Act of 1949. The Emergency Price Control Act of 1942, as amended, will be referred to hereafter as the 1942 Act or Act of 1942.

STATEMENT

Petitioners, Louis Miller and Mrs. Louis Miller are landlords of housing accommodations in

San Antonio, Texas (R. 6-10) and as such were, at the times here involved subject to the Emergency Price Control Act of 1942 and Housing and Rent Act of 1947, as amended, as well as the rent regulations issued thereunder. Between June 1, 1946 and the early months of 1949 (R. 6-10), they demanded and received rents in excess of those permitted by the applicable maximum rent regulation,[1] issued under the Housing and Rent Act of 1947, as amended (R. 15-16). On March 30, 1949, Congress amended Section 205 of the 1947 Act to provide that if a tenant failed to institute an action for statutory damages within thirty days from the violation, "the United States may institute such action" within one year after the date of violation (*infra*, p. 17). The tenants in petitioners' premises having failed to sue for recovery of overcharges (R. 3-4), the United States brought this action on July 20, 1949, against petitioners for restitution of overcharges and injunctive relief pursuant to Section 205(a) of the 1942 Act and Section 206(b) of the 1947 Act, and for statutory damages pursuant to Section 205 of the 1947 Act as amended in 1949 (R. 2). After filing of suit, but prior to judgment, the Housing Expeditor issued a public announcement of the termination of rent control in Texas as of October 18, 1949 (14 F. R. 6114) because of action taken by the legislature under Section 204(j)(2) of the Act. Peti-

[1] Controlled Housing Rent Regulation, as amended, 12 F. R. 4331; 13 F. R. 1861; 14 F. R. 1571.

tioners filed an amended answer denying the charges of violation (R. 11-13). In addition, they asserted among other defenses that respondent was not entitled to recover any damages for violations, if any, committed prior to April 1, 1949, the effective date of the amendment to the 1947 Act, and moreover that "there is no legal or equitable justification for ordering restitution since no injunctive relief is sought and since rent control in Texas is at an end * * *" (R. 13).

After a trial, the District Court found that petitioners' violations were wilful and that they had failed to use practicable precautions against the occurrence of the violations (Finding 4, R. 17). Accordingly, the District Court awarded judgment against petitioners requiring restitution of overcharges to 43 named individual tenants in the amount of $5,265.04 (R. 18-20), and for $6,577.92, double damages, of which $4,774.30 represented double damages for violations committed prior to April 1, 1949, and within one year of institution of suit (R. 16, 20).

Upon appeal, the court below affirmed (R. 29-33). Following its prior decision in *Jackson* v. *Woods,* 182 F. 2d 338, the court below held that the trial court had authority to award restitution in an action under the 1942 and 1947 Acts even though no injunctive relief was sought because of termination of rent control in the state, where the action was instituted prior to the end of rent con-

trol in Texas (R. 30-31). Also, in accord with decisions of other courts of appeals, the court below concluded that the 1947 Act as amended in 1949 should be construed as authorizing recovery of treble damages by the United States based upon rental overcharges occurring prior to April 1, 1949, the effective date of the amendment, so long as they were not barred by the one year statute of limitations (R. 32-33). A petition for rehearing was filed by petitioners with a request that no action be taken by the court below until this Court decided *United States* v. *Moore,* 340 U.S. 616 (R. 34-37). After the decision in the *Moore* case in favor of the United States, the petition for rehearing was denied (R. 38).

ARGUMENT

1. There is no merit to petitioners' first contention that the court below erred in construing Section 205 of the Act as amended in 1949 as authorizing recovery of statutory damages by the United States based upon violations occurring prior to the date of amendment, so long as they are not barred by the one year limitation provided by the statute.

a. The decision below is in accord with the decisions of the Third and Ninth Circuits (*United States* v. *Gianoulis,* 183 F. 2d 378 (C.A. 3); *Mattox* v. *United States,* 187 F. 2d 406 (C.A. 9)),[2] the

[2] A petition for certiorari is pending in the *Mattox* case (1951 Term, No. 110), but the petition does not raise any of the questions presented in the instant case.

only other appellate courts which had passed upon the question (which, of course, arises only in cases commenced before April 1, 1950).[3] In addition to the three court of appeals decisions, the vast majority of the district court decisions on the point are to the same effect.[4]

The reasoning of the courts of appeals is expressed in the *Gianoulis* opinion, in which the Fifth and Ninth Circuits have concurred, as follows (183 F. 2d 378, at 380-381):

> Section 205, both before and after the pertinent 1949 amendment, created and authorized only one action. Prior to the amendment the tenant had a right of action to recover damages in treble the amount of overcharge. After the amendment the landlord receiving

[3] The period of limitations is one year (Sec. 205, *infra*, p. 17.

[4] *United States* v. *Resch*, 85 F. Supp. 389 (W.D. Ky.); *United States* v. *Mitchell*, 86 F. Supp. 453 (W.D. Mo.); *United States* v. *Fullerton*, 87 F. Supp. 359 (D. Mass.); *United States* v. *Beatty*, 88 F. Supp. 646 (S.D. Iowa); *United States* v. *Allen Realty Co.*, Civ. No. 2614 (D. Conn.) Jan. 19, 1950; *United States* v. *Smith*, 95 F. Supp. 622 (W.D. Pa.) (Judge Gourley); *United States* v. *Rothstein*, Civ. No. 7813 (W.D. Pa.) Jan. 24, 1950 (Judge Follmer); *United States* v. *Simon*, Civ. No. 8149 (W.D. Pa.) Jan. 10, 1950 (Judge Maris); *Woods* v. *Levenson*, No. 1561 (S.D. Fla.) (Judge De Vane) (No date); *Woods* v. *Becker*, No. 2928-M-Civil (S.D. Fla.) July 12, 1949; *United States* v. *Forsberg-Viking Corp.*, No. 43-73 (S.D. N.Y.) May 19, 1949; *United States* v. *Cox*, No. 3687 (N.D. Tex.) Aug. 1, 1949; *United States* v. *Weiss*, Civ. No. 1667 (W.D. Ky.) July 26, 1949.

Contra: *United States* v. *Mashburn*, 85 F. Supp. 968 (W.D. Ark); *United States* v. *Bize*, 86 F. Supp. 939 (D. Neb); *United States* v. *Pleas Hill*, No. 2340 (S.D. Ohio) June 1950; *United States* v. *Fireman*, No. 28920-G (N.D. Cal.) Sept. 14, 1949; *United States* v. *Patrick*, No. 5003 (S.D. Tex.) March 10, 1950. The last two cases cited are in circuits in which the courts of appeals have since reached a contrary result.

the overcharge was liable to the tenant or to the United States. He was not liable to both. The amendment created no new cause of action albeit it provided the machinery whereby, a new plaintiff, the United States, could assert the same cause of action and collect the same damages from the landlord when the tenant, within the time specified, had failed to take steps to enforce the landlord's liability. The amendment improved the legal techniques for enforcing an existing statutory remedy. Enlargement of means of enforcement had been found necessary because, although tenants had the right to bring suits for treble damages where rents had exceeded the legal maximum, they had come to fear evictions by the owners and landlords by way of reprisal. Congress made changes in the existing law which were primarily procedural in character and necessary to effect prompt enforcement. The remedy was left unchanged and the amendment served to add a kind of "use" plaintiff who could bring suits, causes of action having accrued, when the tenants failed to do so.

We think it was the intent of Congress to cause the 1949 amendment, here under discussion, to have retroactive effect. This is demonstrated both by the form in which the amendment was passed and the circumstances under which it was enacted as demonstrated by the legislative history.

b. Section 205, before and after the 1949 amendment, authorized the tenant to sue for treble dam-

ages within one year; the amendment permitted the United States to "institute *such* action within *such* one-year period". The "such" in this sentence plainly referred back to "the same action which the tenant might previously have instituted" which would include an action for a violation prior to the amendment (*United States* v. *Fullerton,* 87 F. Supp. 359, 362 (D. Mass.)). "The 1949 Act created no new or additional liabilities; it merely provided that the same liability, subject however to specified limitations, might be enforced by the government unless enforced by the tenant." *United States* v. *Allen Realty Co.,* Civ. No. 2614 (D. Conn.), Jan. 19, 1950.

The legislative history referred to in the *Gianoulis* opinion supports this interpretation of the Act. As the court noted in *United States* v. *Fullerton,* 87 F. Supp. 359, 362 (D. Mass.):

> In the debate on the passage of the amendment in the House of Representative [s], the retroactive interpretation of its provisions was emphasized by the statement of Congressman Wolcott in opposing its adoption: "We also in the bill give the Expediter the authority to come in and sue in the name of the United States for any alleged violations for the past year. Understand, they may go back a year and sue for any violation." [95 Cong. Rec. 2191.] [5]

[5] Additional proof of Congressional intent is shown by the difference in treatment given the amendment in the Act of 1949 and the amendment to Section 205(e) of the Emergency

See also 95 Cong. Rec. 2188 (Representative Spence); Hearings before House Committee on Banking and Currency Relative to 1949 Extension of Rent Control, 81st Cong., p. 320 (Representative Patman).

Petitioners urge that if Congress had intended the Act to be given retroactive effect, it would have used specific language for that purpose. If substantive rights were affected, there might be some force to this contention, but specific statutory language is not required to give an Act retroactive effect where as here, the provisions of the Act are of a remedial or procedural character. (See *Sturges* v. *Carter,* 114 U. S. 511; *Standard Accident Insurance Co.* v. *Miller,* 170 F. 2d 495 (C.A. 7); *Bowles* v. *Miller,* 151 F. 2d 992 (C.A. 10); *Bowles* v. *Strickland,* 151 F. 2d 419 (C.A. 5); *Benas* v. *Maher,* 128 F. 2d 247 (C.A. 8); *Royal Indemnity Co.* v. *Cooper,* 26 F. 2d 585 (C.A. 4); *In re Carter,* 32 F. 2d 186 (C.A. 2). The 1949

Price Control Act in June 1944, when the right to sue for statutory damages was first vested in the Price Administrator. In 1944, when Congress vested the Price Administrator with the right to sue where the tenant failed to do so, it expressly gave the amendment prospective effect by stating that it "shall be applicable only with respect to violations occurring after the date of enactment of this Act." (*infra,* p. 19). Although Congress had before it the prospective language used under the Act of 1944, nevertheless, when it enacted the amendment to the Act of 1949, it did not use similar restrictive language that the amendment should have prospective applicability only. Failure of Congress to include in the present Act, the restriction which it took pains to include in the prior Act, is persuasive that Congress did not intend to bar the Expediter from bringing the very same kind of action that the tenant himself could bring.

amendment to Section 205 does not change in any way the nature or extent of the liability or the statute of limitations which may be set up as a bar to it. It does not create the wrong where none existed before, nor increase the sanction. It leaves both the wrong and the sanction intact. The liability of a landlord for paying three times the overcharge in a suit instituted within a year from the occurrence of the violation remains the same. The amendment merely allows the United States to invoke an existing sanction against a wrong already committed. There is no interference with vested rights because "This is not the case of a new law reaching backwards to make payments illegal that were free of infirmity when made" (Cf. *Woods* v. *Stone,* 333 U.S. 472, 477; *Graham & Foster* v. *Goodcell,* 282 U.S. 409, 426).[6]

The reason for the principle against the retroactive interpretation of statutes is to protect persons against liabilities which they could not have foreseen at the time they acted. *Chase Securities Corp.* v. *Donaldson,* 325 U.S. 304, 315-316. But

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[6] Petitioners also claim that their right to offset claims is a vested right which has been invaded as a result of the ruling below (Br. p. 8). Neither the record nor petitioners' brief in the court below disclose that this contention was advanced before. But petitioners had the right and opportunity to set up counterclaims and offsets to the Government's claim for restitution and to bring in the tenants as parties (*Porter* v. *Warner Holding Co.,* 328 U.S. 395, 403); they did not avail themselves of this opportunity. In addition, petitioners still retain their right to sue a tenant for any damage or unpaid rent. It is thus difficult to understand how substantive rights have been offended in this case.

here the liability for treble damages existed before the 1949 amendment, and petitioners are not in a position to—and in fact do not—claim that they demanded and received overcharges because of reliance upon the tenant's reluctance to sue.

In short, whatever retroactivity there may be involved in the amendment to Section 205 affects no substantive rights; it is reasonable and violates no "substantial equity" (*Graham & Foster* v. *Goodcell,* 282 U.S. 409, 429); it changes no provisions upon which defendants had relied to their detriment (*Chase Securities Corp.* v. *Donaldson,* 325 U.S. 304). It merely prevents a defendant from profiting from his own wrong, an advantage which neither Congress nor the Constitution has protected. (*id.,* at 316).

2. Equally lacking in merit is petitioners' claim that the court below erred in sustaining the judgment of restitution, since negative injunctive relief was no longer required in the decontrolled State of Texas. Petitioners in effect concede that this Court's opinion in *United States* v. *Moore,* 340 U.S. 616, is dispositive of this contention but assert that the matter was not properly presented in that case (p. 11 of petition). The fact is that all of the arguments advanced by petitioners in the instant case were fully and carefully considered by this Court in the *Moore* case initially and upon rehearing. No new grounds are asserted by petitioners which would justify any departure from

the *Moore* decision. If anything, the facts of the instant case call more strongly for the application of the *Moore* decision, since suit in the instant case was instituted *prior* to decontrol, while in the *Moore* case suit was instituted *after* decontrol became effective.[7] The fact that decontrol was effective for the entire State of Texas in the instant case, while decontrol was effective merely for the City of Dallas in the *Moore* case, is obviously a distinction without any difference.

Petitioners' statement that the decision below is in conflict with the reasoning of the Court of Appeals for the Ninth Circuit in *Woods* v. *Richman,* 174 F. 2d 614, is not accurate. On the contrary, in the *Richman* case the Court of Appeals held (pp. 615-616) that restitution of rental overcharges was authorized under the Emergency Price Control Act of 1942 even though the Act had terminated. In reaching this conclusion, the Court of Appeals recognized that despite the expiration of the 1942 Act, rent control "continued to be a national policy" as reflected by the enactment of the Housing and Rent Act of 1947. So here too, even though the State of Texas ended federal rent controls in the State, the problem of rent control continued to be one of nationwide importance, and it was therefore appropriate for the court below to recognize that the order of restitution in a decon-

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[7] It was upon this ground that the court below distinguished its own decision in the *Moore* case (reversed by this Court).

trolled area was a means of bringing about more effective compliance with the Act.

Moreover, the amendment of the Housing and Rent Act of 1951 (Pub. L. 96, 82nd Cong. effective August 1, 1951) confers upon the United States the right to recontrol rents in those states which have no rent control upon certification that an area is a critical defense housing area. Section 204 of the Housing and Rent Act of 1947, as amended, *infra* pp. 15-16). In no respect therefore, may it now be claimed that an order of restitution directing the return of overcharges in a decontrolled area is designed merely to vindicate a defunct policy of an Act no longer in effect. (See p. 13 of Petition).

CONCLUSION

The decision of the court below is clearly correct. There is no conflict of decisions, and further review is not warranted. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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AUGUST, 1951.

APPENDIX

1. Housing and Rent Act of 1947, 61 Stat. 193, as amended, 62 Stat. 93, Pub. Laws 31 and 574, 81st Cong.; Pub. Law 96, 82nd Cong. 50 U.S.C. App. (Supp. IV) 1881 et seq.

> SEC. 204. (j) (2) If any State by law declares that Federal rent control is no longer necessary in such State or any part thereof and notifies the Housing Expediter of that fact, the Housing Expediter shall immediately make public announcement to the effect that he has been so advised. At the same time all rent controls under this Act, as amended. with respect to housing accommodations within such State or part thereof shall be terminated on the fifteenth day after receipt of such advice. As used in this subsection, the term "State" means any State, Territory, or possession of the United States.

Section 204 as amended by Pub. Law 96, 82nd Congress provides a new subsection 204 (l):

> (l) Whenever the Secretary of Defense and the Director of Defense Mobilization, acting jointly, shall determine and certify to the President that any area (whether then or ever controlled or decontrolled under this Act) is a critical defense housing area, the President shall by regulation or order establish such maximum rent or maximum rents for any housing accommodations, not then subject to rent control, in such area or portion thereof as in his judgment will be fair and equitable. Notwithstanding the provisions

of Section 202(c) the term 'controlled housing accommodations' as applied to any such critical defense housing area shall include all housing accommodations in the area, without exception. In establishing any maximum rent for any housing accommodations under this subsection, the President shall give due consideration to the rents prevailing for such housing accommodations or comparable housing accommodations during the period from May 24, 1950, to June 24, 1950, and he shall make adjustment for such relevant factors as he shall determine and deem to be of general applicability in respect to such accommodations, including increases or decreases in property taxes and other costs within such area. * * *.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment (or shall be liable to the United States as hereinafter provided), for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amounts of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that

the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation: *Provided,* That if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the United States may institute such action within such one-year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same per-

son prior to the institution of the action in which such judgment was rendered.

SEC. 206. * * *

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

2. Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765, 58 Stat. 632, 59 Stat. 306, 60 Stat. 664, 50 U. S. C. App., 901 et seq.)

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts

or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205(e) as amended by Section 108(b) and(c) of the Stabilization Extension Act of 1944, provides in part as follows:

> The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.

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